117.

SUPREME COURT OF THE UNITED STATES.

No. 84.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

CHARLES LE BARON.

IN ERROR TO THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

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GIDEON, printer.

UNITED STATES OF AMERICA,
Southern district of Alabama.

Pleas had before the honorable the circuit court of the United States for the fifth judicial circuit and southern district of Alabama, at a term thereof, begun and held in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-four. The honorable John Gayle, judge of said court, presiding.

THE UNITED STATES
vs. } 3259.
CHARLES LE BARON.

Be it remembered, that heretofore, to wit, on the fourteenth day of March, in the year of our Lord one thousand eight hundred and fifty-three, the plaintiffs sued out of said court a writ of capias ad respondendum against defendant, in the words and figures following, to wit:

Writ of capias ad res.

UNITED STATES OF AMERICA.

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the body of Charles Le Baron, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the hon. the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of April next, to answer unto the United States of America, in a plea that he render to the United States of America the sum of twenty thousand dollars, which he owes to and unjustly detains from the United States of America, to the damage of the United States of America of thirty thousand dollars. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said [L. S.] circuit court, this fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-two.

Issued the fourteenth day of March, in the year of our Lord one thousand eight hundred and fifty-three.

Attest: JOHN FITTS,
Clerk C. C. southern district of Alabama.

Cause of action.

This action is founded on a joint and several bond, for the sum of twenty thousand dollars, made by Oliver S. Beers, Charles Le Baron, the defendant, and George N. Stewart, dated 1st July, 1850, and payable to

the United States of America, with a condition annexed, to the effect that the said Oliver S. Beers, as deputy postmaster at Mobile, should well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and account for and pay over all moneys which should come to his hands as such; which condition has been broken by the failure of the said Beers well and truly to execute the duties of said office, and to account for and pay over such moneys.

HOPKINS, JONES & LOMAX,
Plffs. attys.

Marshal's return.

Rec'd, 14th March, 1853, and on the same day executed this writ on the defendant, and gave him a copy.

CHAS. BINGHAM,
U. S. Marshal.
By H. WARFIELD,
Deputy.

And on the 13th day of April, 1853, the same being a day of the April term of said court, begun and held on the second Monday of April, A. D. 1853, the plaintiffs filed in said court a declaration, in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA.

Circuit court U. S., fifth judicial circuit and southern district of Alabama—April term, A. D. 1853.

Charles Le Baron, a citizen of the State of Alabama, was attached to answer to the United States of America, in a plea of debt, &c. &c. Whereupon the said United States of America, by P. Phillips, their attorney, complain of said Charles Le Baron, that Oliver S. Beers having been duly appointed deputy postmaster of the city of Mobile, in the county of Mobile, and State aforesaid, the said defendant as surety for the said Oliver S. Beers, heretofore, to wit, on the 1st day of July, A. D. 1850, at Mobile aforesaid, and within the jurisdiction of this court, by his certain writing obligatory, sealed with his seal, and now here shown to the court, the date whereof is the day and year aforesaid, acknowledged himself to be held and firmly bound unto the United States of America, in the sum of twenty thousand dollars above demanded, which said writing obligatory was and is subject to a certain condition thereunder written, whereby said Oliver S. Beers, as deputy postmaster aforesaid, undertook and agreed well and truly to execute the duties of said office, and among other things the said Oliver S. Beers agreed to pay the balance of all moneys that should come to his hands, for the postage of whatever is by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; and also to do and perform, as agent for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, faithfully to account with the United States in the manner directed by said Postmaster

General, for all moneys, bills, bonds, notes, receipts, and other vouchers which he, as agent as aforesaid, shall receive for the use and benefit of said Post Office Department. And the plaintiff avers that the said Oliver S. Beers, as postmaster aforesaid, has come into the possession and receipt of large sums of money for postages and post office dues; that there is due and owing to the plaintiff a large balance on this account, and that the said Oliver S. Beers has failed to comply with the conditions of said writing obligatory aforesaid, by refusing, on the demand of said Postmaster General, to pay over the said balance, and to account for the same.

By reason of which breach, the said writing obligatory has become forfeited, whereby an action hath accrued to said plaintiff, to demand and have of and from Charles Le Baron, surety as aforesaid and defendant herein, the sum of twenty thousand dollars.

Yet the said defendant hath not paid the said sum, although often requested so to do, but to pay the same has hitherto wholly refused, to the damage of said plaintiffs thirty thousand dollars.

PHILLIPS,
Atty. for plffs.

And on the 13th day of April, 1853, the same being a day of the April term of said court, begun and held on the second Monday in April, A. D. 1853, the following order was made in this cause:

Continuance.

THE UNITED STATES
vs.
CHARLES LE BARON.

It is ordered by the court that this cause be continued.

Demurrer.

THE UNITED STATES
vs.
CHARLES LE BARON.

Southern district of Alabama, circuit court of the United States—April term, 1853.

And the said defendant, by his attorneys, comes and defends the wrong and injury, when, &c., and saith that the said declaration, and the matters and things therein set forth, are not sufficient in law to entitle the said plaintiffs to have and maintain their aforesaid action against him the said defendant in this behalf, and that he, the said defendant, is not bound by the law of the land to answer thereto; wherefore, for want of a sufficient declaration in this behalf, the said defendant prays judgment of said declaration, &c.

STEWART & EASTON,
Attos. for deft.

Filed 18th April, 1853.

JOHN FITTS, *Clk.*

And on the 9th day of January, 1854, the same being a day of the December term of said court, begun and held on the fourth Monday of December, A. D. 1853, the following order was made and entered in this cause, to wit:

Order allowing amendment.

THE UNITED STATES
vs.
CHARLES LE BARON.

This day came the parties by their attorneys, and thereupon came on to be heard the demurrer of the defendant to the plaintiffs' declaration filed herein, and after the argument of counsel as well in support of as against the same, it is considered by the court that the demurrer be sustained; and thereupon, on motion of the plaintiffs, by their counsel for this purpose, they are permitted to amend their declaration in this behalf, and the said cause is continued until the next term of this court.

And afterwards, to wit, on the 18th day of April, 1854, the same being a day of the April term of said court, begun and held on the second Monday of April, 1854, the plaintiffs filed an amended declaration, in the words and figures following:

Amended declaration.

UNITED STATES OF AMERICA.

Circuit court U. S., fifth judicial circuit and southern district of Alabama.

Charles Le Baron, a citizen of the State of Alabama, was attached to answer to the United States of America, in a plea of debt, &c. Whereupon the said United States of America, plaintiffs, by Manning & Walker, attorneys, complain of the said Charles Le Baron, of a plea that he render unto them the sum of twenty thousand dollars, which to them, the said plaintiffs, he owes, &c.

For that whereas, heretofore, to wit, on the first day of July, in the year of our Lord eighteen hundred and fifty, at Mobile, to wit, in the State aforesaid, and within the jurisdiction of this court, the said Charles Le Baron, by his certain writing obligatory, sealed with his seal, and now here to the court shown, jointly and severally with other persons not proceeded against in this suit, acknowledged himself to be held and firmly bound unto the said United States, in the sum of twenty thousand dollars to be to them paid, which said writing obligatory was and is subject to a certain condition thereunder written, whereby, after reciting that one Oliver S. Beers was deputy postmaster at Mobile, in the said State of Alabama, it was provided that in case the said Oliver should well and truly execute the duties of said office of deputy postmaster according to law and the instructions of the Postmaster General, and should faithfully, once in three months, and oftener if required, render accounts of his receipts and expenditures as deputy postmaster, to the Post Office Department, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters; and

should pay the balance of all moneys that should come to his hands for the postage of whatever was by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; and should safely keep without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same should be ordered by the Postmaster General to be transferred or paid out, and when such orders for transfer or payment should be received, should faithfully and promptly make the same as directed; and should also faithfully do and perform as agent and depositary for the Post Office Department all such acts and things as might be required of him by the Postmaster General; and should moreover faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, drafts, receipts, and other vouchers which he, as agent and depositary as aforesaid, should receive for the use and benefit of the said Post Office Department; then, and in that case, the said writing obligatory should become void.

And the plaintiffs aver that the said Oliver did not well and truly execute the duties of his said office according to law and the instructions of the Postmaster General.

1. And the plaintiffs assign for breach of said condition, that while said Oliver S. Beers was deputy postmaster as aforesaid, under said writing obligatory, and after the making and delivery thereof, to wit, on the 10th day of July aforesaid, and divers other days before the commencement of this suit, at, to wit, his office in the district aforesaid; he, the said Oliver, as such deputy postmaster, and according to law, received divers large sums of money for postage, and other moneys properly payable and paid to him as such deputy postmaster, for and on account of the said plaintiffs; that is to say, sums amounting together to fifty-one thousand and seventy-five dollars and twenty-five cents; and that there is now due and owing from him, on account of said moneys, to the plaintiffs, a large balance, to wit, a balance of twenty thousand five hundred and forty-three dollars and fifty-two cents; which balance the said Oliver hath wholly failed and refused, and still neglects and refuses to pay, although the same was duly demanded of him under the instructions of the Postmaster General aforesaid, and on behalf of plaintiffs, to wit, on the day of February, in the year 1853, at Mobile, to wit, in the district aforesaid.

2. And for a further assignment of a breach of the said condition, the plaintiffs further say that the said Oliver S. Beers, while he was deputy postmaster as aforesaid under the said writing obligatory, and after the making and delivery thereof, did not safely keep without loaning or using the public money collected by him, or that otherwise and according to law came to his possession or custody during that time, but that, on the contrary, he took and converted to his own use, to wit, on the 10th day of July, in the year 1850, and on divers other days before the commencement of this suit, to wit, at his office in the district aforesaid, a large other sum of such public money belonging to plain-

tiffs, to wit, the further sum of twenty thousand six hundred and seventy-three dollars and sixty-one cents, which had theretofore been collected by him as such deputy postmaster, or otherwise according to law been placed in his possession and custody as such deputy postmaster, at, to wit, his office in the district aforesaid, whereby the last mentioned sum of money has been lost to the plaintiffs.

3. And for a further assignment of a breach of the said condition, the said plaintiffs say that the said Oliver, while he was deputy postmaster as aforesaid, and as such was the agent and depositary for the Post Office Department, as in said condition mentioned, after the making and delivery of said writing obligatory and under the same, to wit, on the 10th day of July, in the year 1850, and on divers other days before the commencement of this suit, to wit, at his office in the district aforesaid, received for the use and benefit of the said Post Office Department, according to law, divers other large sums of money, to wit, the sum of twenty thousand dollars, and has failed to account therefor with the United States aforesaid, in the manner directed by the Postmaster General.

4. And for a further assignment of a breach of said condition, the plaintiffs say that while the said Oliver was deputy postmaster as aforesaid, under the said writing obligatory, and after the making and delivery thereof, to wit, on the first day of July, in the year 1850, and on divers other days before the commencement of this suit, to wit, at his office in said district, he, the said Oliver, as such deputy postmaster and according to law, received divers other large sums of money for postage, and other moneys properly payable and paid to him as such deputy postmaster, for and on account of the said plaintiffs; that is to say, sums amounting together to fifty-one thousand and seventy-five dollars and twenty-five cents, and that he, the said Oliver, so negligently, carelessly, and faithlessly acted then and there in his said office, and so neglected to take care of said moneys, and to superintend with due diligence the assistants and clerks employed by him to aid him as such deputy postmaster, that the said assistants and clerks, or some of them, by reason thereof, then and there embezzled or took and converted to their own use, or otherwise wasted, a large amount of the said last mentioned sums of moneys, to wit, the sum of twenty thousand dollars thereof, whereby the same was wholly lost to the plaintiffs.

5. And the plaintiffs assign for a further breach of the aforesaid condition of said writing obligatory, that the said Oliver S. Beers, while acting as deputy postmaster as aforesaid, under said writing obligatory, and after the same was made, did not promptly and faithfully pay out the public moneys which lawfully came to his hands as such deputy, upon the orders of transfer and payment thereof, which he received of the Postmaster General; but, on the contrary, failed so to do, in this, to wit: that the said Oliver S. Beers, having received a large amount of the public moneys lawfully paid to him, and placed in his hands as such deputy postmaster, to wit, the sum of twenty-five thousand dollars, which had not been lawfully transferred or paid out by him, here-

tofore, to wit, on the 29th day of January, in the year 1853, at his office in Mobile, to wit, in the district aforesaid, failed and refused to pay to the lawful holder and payee thereof the amount of a draft or order upon him as such deputy postmaster, made by the Postmaster General according to law, on the eighteenth day of January in said year 1853, requiring him the said Oliver, deputy as aforesaid, to pay to Thomas H. Watts, executor of Wade Allen, or order, eight thousand dollars, and which said draft or order was, to wit, on the 29th day of January aforesaid, duly presented to him the said Oliver for payment, and payment thereof demanded, to wit, at his office in the district aforesaid, and payment thereof then and there refused by him.

By reason of which said several breaches the said writing obligatory has become forfeited; whereby an action hath accrued to the plaintiffs to demand and have of the said Charles Le Baron, the defendant, the aforesaid sum of twenty thousand dollars in the said writing obligatory mentioned.

Yet the said defendant hath not paid the said sum of money or any part thereof, although often requested so to do, but hath wholly failed and refused, and still neglects and refuses, to the damage of the plaintiffs of thirty thousand dollars; and therefore they bring suit, &c.

MANNING & WALKER,
Att'ys for plaintiffs.

And on the 18th day of April aforesaid, upon the filing of the said amended declaration, an order was made and entered, in the words following:

Order of continuance.

THE UNITED STATES
vs.
CHARLES LE BARON.

Upon the application of the defendant, this cause is continued by the court until the next term.

Order allowing to 1st June to plead or demur.

And, upon the further application of the defendant, he is allowed until the first of June next to plead or demur to the amended declaration filed herein.

And on the 29th day of April, 1854, the defendant filed in the clerk's office of said court a demurrer, in the words and figures following, to wit:

Plea—Oyer of bond, &c.

THE UNITED STATES
vs.
CHARLES LE BARON.

Cause pending in the circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

And the said defendant, Charles Le Baron, by attorney, craves oyer of the writing obligatory, which is read to him in these words:

"Know all men by these presents, that we, Oliver S. Beers, of Mobile, in the county of Mobile, State of Alabama, and Charles Le Baron and George N. Stewart, are held and firmly bound unto the United States of America, in the just and full sum of ($20,000) twenty thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

"In witness whereof, we have hereunto subscribed our names, and affixed our seals, this first day of July, in the year of our Lord one thousand eight hundred and fifty, (1850.")

And he further craves oyer of the condition thereto annexed, which is also read to him:

"The condition of this obligation is such, that whereas the above bounden Oliver S. Beers is deputy postmaster at Mobile aforesaid: Now, if the said Oliver S. Beers shall well and truly execute the duties of the said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as deputy postmaster, to the Post Office Department, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands for the postage of whatever is by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; and shall keep safely, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, shall faithfully account with the United States in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, drafts, receipts, and other vouchers which he, as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post Office Department; then the above obligation shall be void.

OLIVER S. BEERS, [ ]
CH. LE BARON, [ ]
GEORGE N. STEWART. [SEAL.]

Witness—FRANCIS DAVID,
ROBERT M. SANDS."

Demurrer.

And thereupon he says, actio non, because he says the matters and things set forth in the declaration, and in the assignment of the breaches of the condition of said bond, are insufficient in law to enable the plaintiffs to maintain their said suit against him; and for causes of demurrer he assigns:

1st. That the bond and condition are insufficient in law to give the plaintiffs a right of action.

2nd. That the assignment of breaches of the condition of said bond, as set forth in said declaration, are insufficient to enable the plaintiffs to maintain said suit, and therefore he demurs to each assignment of the breach of the condition of said bond separately.

HAMILTONS, *for deft.*

And on the 5th day of January, 1855, the same being a day of the December term of said court, begun and held on the 4th Monday of December, A. D. 1854, the following order was entered in this cause:

Order allowing amendment.

THE UNITED STATES
vs.
CHARLES LE BARON.

This day came the United States by their counsel, and came also the defendant; and the demurrer of the defendant to the plaintiffs' declaration coming on to be heard before the same was decided, the said United States move the court for leave to amend their declaration as to time and venue in some of the breaches assigned, which leave is given by the court, and the declaration amended accordingly.

And on the 11th day of January, 1855, being also a day of the term of said court last aforesaid, the defendant filed a demurrer to plaintiffs' said amended declaration, which is as follows, to wit:

Plea and prayer for oyer of bond, &c.

UNITED STATES OF AMERICA
vs.
CHARLES LE BARON.

Circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

And now the said defendant comes and defends the wrong, &c., and prays oyer of the said bond and the condition thereof, which are read to him as follows, to wit:

"Know all men by these presents, that we, Oliver S. Beers, of Mobile, in the county of Mobile, State of Alabama, and Charles Le Baron and George N. Stewart, are held and firmly bound unto the United States of America in the just and full sum of ($20,000) twenty thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

"In witness whereof, we have hereunto subscribed our names and affixed our seals, this first day of July, in the year of our Lord one thousand eight hundred and fifty (1850).

"The condition of this obligation is such, that whereas the above bounden Oliver S. Beers is deputy postmaster at Mobile aforesaid:

Now, if the said Oliver S. Beers shall well and truly execute the duties of the said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as deputy postmaster, to the Post Office Department, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands for the postage of whatever by law is chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; and shall keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and, moreover, shall faithfully account with the United States in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, drafts, receipts, and other vouchers, which he, as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post Office Department; then the above obligation shall be void.

OLIVER S. BEERS, [ ]
CH. LE BARON, [ ]
GEORGE N. STEWART. [ ]

Witness—FRANCIS DAVID,
ROBERT M. SANDS."

Demurrer.

And, therefore, the said defendant says, that the matters and things as set forth and stated in said declaration are insufficient in law to enable the plaintiffs to sustain said suit, or to have and demand the sum of money mentioned in said writing obligatory, and, therefore, he demurs to said declaration, and for causes of demurrer he says:

That said writing obligatory is uncertain and insufficient in law to enable the plaintiffs to maintain said suit, and that the same is void in law.

2nd. That the assignment of the breaches of the condition of said writing obligatory is too uncertain and insufficient to enable the plaintiffs to have or maintain said suit: in this, that it does not appear from said assignment of breaches, that the defaults complained of occurred or took place during the term for which this defendant was bound as the security of said Oliver S. Beers as deputy postmaster at Mobile, nor within two years prior to the commencement of this suit.

3d. It does not appear from the declaration that the defaults specified were made or took place during the term of office for which said defendant was bound as the security of said Beers. And for these

insufficiencies the defendant demurs to said declaration, and to the assignment of the breaches of the condition of said writing obligatory, separately, to all and each thereof, and prays judgment whether said plaintiffs ought to have or maintain said suit.

HAMILTONS, *for deft.*

And on the 13th day of January, 1855, a day also of the term last aforesaid of said court, and after the overruling of the demurrer in this case, the defendant filed pleas in the words and figures following, to wit:

UNITED STATES
vs.
CHARLES LE BARON.

Circuit court of the United States, December term, 1854.

And the said Charles Le Baron, defendant, comes by his attorneys and defends, &c., and for plea in this behalf saith, actio non, &c., because he saith that the said Oliver S. Beers did not, in any manner, break the condition of said bond, as in said declaration the said plaintiffs hath alleged, and for answer to the said breach in the said declaration first assigned, he saith:

1st. That the said Beers did not, while he was postmaster under said writing obligatory, and after the making and delivery thereof, at the times in said breach mentioned, as such deputy postmaster, according to law, receive any moneys for postages, or other moneys properly payable and paid to him as such deputy postmaster, for account of said plaintiffs, to any amount whatever; nor is there now due and owing from him, on account of said moneys, to said plaintiffs any moneys which he, said Beers, has refused to pay, nor was there such demand or refusal to pay under instructions, as the said plaintiffs aver, but that, in truth and in fact, all the said averments of fact in said first breach assigned and set forth are wholly untrue; and this he prays may be inquired of by the country, &c.

2d. And for answer to the second breach in the said plaintiffs' declaration secondly assigned and set forth, the said defendant in fact saith, that the said Beers, while he was deputy postmaster under said writing, and after the making and delivery thereof, did not fail or omit safely to keep, without using or loaning any public money collected by him, or that otherwise and according to law came to his possession or custody; nor did he take or convert to his own use, on the days in said breach alleged, any sums of money before collected by him as deputy postmaster, or otherwise, according to law, or placed in his control as deputy postmaster, in his office, whereby any such sum of money was lost to the said plaintiffs, as in said second breach is alleged, but that the said averments in said second breach alleged are wholly untrue; and this he prays may be inquired of by the country, &c.

3. And as to the said third breach in the said declaration alleged, said defendant saith, that said Beers did not receive for the use of the said Post

Office Department according to law, while he was postmaster, and as such was agent and depositary for the Post Office Department, as in said condition mentioned, after the making and delivery of said writing and under the same, at the days or times specified, any such sums of money as is in said third breach mentioned, which he has failed to account for with the plaintiffs in the manner directed by the Postmaster General, as in said third breach is alleged; but that in truth and fact the said allegations in the said third breach averred are wholly untrue in manner and form as therein set forth; and this he prays may be inquired of by the country, &c.

4. And as to the fourth assignment of breaches in the said plaintiffs' declaration set forth, the said defendant saith, that the said Beers did not, while he was deputy postmaster under said writing, and after the making and delivery thereof, at the times and place in said fourth breach described, receive any such sums of money for postage, or other moneys payable and paid to him as such deputy postmaster, for and on account of the said plaintiffs, nor did he so negligently or carelessly, or faithlessly act in his said office, or neglect to take care of said moneys, or superintend with due diligence the assistants or clerks employed by him to aid him as such deputy postmaster, so that the said assistants or clerks embezzled or took, or converted to their own use, or waste any moneys, nor were any such moneys thereby lost to the said plaintiffs as in the said fourth breach is averred and alleged, but in truth all said allegations in said fourth breach so alleged are wholly untrue; and this he prays may be inquired of by the country, &c.

5. And as to the said fifth breach in the said declaration specified, the defendant saith, that said Beers did not fail or refuse promptly and faithfully to pay out any public moneys lawfully come into his hands as such deputy, upon any order of transfer and payment received of the Postmaster General; nor did he, having received any sum of public moneys lawfully paid to him, or placed in his hands as deputy postmaster, which had not been lawfully transferred or paid out by him, nor did he, on the 29th January, 1853, fail or refuse to pay to any lawful holder and payee the amount of any draft or order drawn on him as such deputy postmaster, made by the Postmaster General according to law, at the time specified in said fifth breach, requiring him to pay said Watts, ex'r, or order, eight thousand dollars, nor was any such draft or order presented to him for payment, nor was any such draft refused payment, as the said plaintiff hath in his said fifth breach averred and alleged, but in truth and in fact, the said allegations and averments in said fifth breach set forth are wholly untrue; and this he, said defendant, prays may be inquired of by the country, &c.

Wherefore, the said defendant saith, that no breach of the condition of said bond hath been committed, as he had above pleaded; and all he has prayed may be inquired of by the country as aforesaid.

Plea 2.

And for a further plea in this behalf, the said defendant saith, actio non, &c., because he saith that no breach of the condition of said bond

hath occurred, or been committed, as set forth in the said declaration specified, within two years next before the commencement of this suit; wherefore he saith, that said defendant is not in any manner responsible for any such breach, and this he is ready to verify, &c.; wherefore he prays judgment in this behalf, &c.

Plea 3.

And the said Charles Le Baron, defendant, by his attorneys comes and defends, &c., and for a third plea in this behalf saith, actio non, &c., because he saith that true it is, that he the said Oliver S. Beers was, at the time of the date of said bond in the said declaration described, to wit, on the first day of July, in the year 1850, deputy postmaster at Mobile, and was in the exercise and discharge of the duties of said office.

And further he saith, that on the day and year aforesaid, he was in the discharge of the duties of said office, by virtue of an appointment made by the President of the United States during the recess of Congress and of the Senate of the United States, to wit, on the fourth day of April, 1849; which appointment so made was by virtue thereof, and by law, to endure until the end of the next succeeding session of the Senate of the United States, and no longer.

And further he saith, that the next succeeding session of the Senate of the United States, after the making of said appointment, ended and determined on the thirtieth day of September, eighteen hundred and fifty. And the said defendant further saith, that the said Oliver S. Beers, deputy postmaster as aforesaid, did not in any manner on the said first day of July, 1850, nor on the said thirtieth day of September, 1850, nor on any day or time between said days, omit to perform any of the duties required by the conditions of said bond, nor commit any of the breaches in the said declaration set forth, but that, on the contrary thereof, he did in all things on the days aforesaid, and at all times between said two days, well and truly perform the conditions of said bond in all things, and did well and truly account for and pay over all moneys which came to his hands, as such deputy postmaster, for account of the plaintiffs, to said plaintiffs, as required by his duty; and did, during all said time, safely keep all such moneys, without using or loaning the same, as by his duty he was required to do; and did faithfully and diligently, during all said time, take care of the moneys of said office, and diligently superintend all the assistants and clerks of said office, and promptly pay all the moneys of said office, so that no loss whatever was sustained by the said plaintiffs in this behalf, but did in all things do and perform the duties of said office during the time above specified; wherefore, he saith that the condition of said bond was not in any manner broken, and this he, the said defendant, is ready to verify, &c.; wherefore he prays judgment, &c.

HAMILTONS, *for defendant.*

And on the 13th day of January, A. D. 1855, a day also of the term last aforesaid of said court, the plaintiffs, by their attorneys, filed in the clerk's office of said court their demurrer to defendant's pleas, in the words and figures following, to wit:

Demurrer to pleas.

THE UNITED STATES
vs.
CHARLES LE BARON.

Plaintiffs demur to so much of the defendant's first plea as relates to the second breach assigned in the declaration, specially; and for cause of demurrer show, that in the issue thereby tendered by defendant upon said breach, the day or days upon which, or time when, the said Oliver S. Beers, as deputy postmaster as aforesaid, and while he was such, received the moneys of plaintiffs as alleged in the declaration, is made a material part of the issue tendered, when in truth and in law such time is not material; wherefore, plaintiffs pray judgment of said part of said first plea.

2d. And to so much of said plea as relates to the 3rd breach assigned, plaintiffs in like manner demur, and for the same cause, that time is thereby made a material part of the issue tendered, when in truth and in law such time is immaterial; wherefore, plaintiffs pray judgment of said last mentioned part of said first plea.

3rd. And to so much of the same plea as relates to the 4th breach assigned by the plaintiffs, the said plaintiffs in like manner demur, and for cause of demurrer show, that time is thereby, and also place, made material parts of the issue thereby tendered, when in truth and in law they are immaterial; wherefore, plaintiffs pray judgment of said last mentioned part of said first plea, and whether they shall be required further to answer said first plea.

4th. And to the plea of defendant secondly above pleaded, plaintiffs demur, because, as they say, said plea is no answer to the declaration.

And to the plea thirdly by defendant pleaded, plaintiffs demur; and for cause of demurrer show that it is not alleged in said plea that the bond sued on in this cause was given for the faithful performance by said Oliver S. Beers of his duties as deputy postmaster, under and during the continuance of his executive or Presidential appointment in said plea referred to, or that said appointment, or the said Oliver's term of office thereunder, continued after the day of the date of said bond.

Wherefore, plaintiffs pray judgment of said plea, &c.

MANNING & WALKER, *Attorneys for plaintiffs.*

The defendant joins in demurrer, and prays the judgment of the court thereon. HAMILTONS, *for defendant.*

And on the 13th day of January, A. D. 1855, a day also of the term last aforesaid of said court, the plaintiffs, by their attorneys, filed replications to defendant's pleas, in the words and figures following, to wit:

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CHARLES LE BARON.

And to the plea of the defendant secondly above pleaded, the said plaintiffs reply and say, that the defaults of the said Oliver S. Beers as

deputy postmaster as aforesaid, whereof the plaintiffs complain in their assignment of breaches of the said bond, did occur or were committed within two years next before the commencement of this suit; and of this they put themselves upon the country.

And the defendant does the like.

DARGAN, SMITH & HAMILTON,
Defendant's attorneys.

And for a replication to the plea of the defendant thirdly above pleaded, the said plaintiffs say, that on and after the delivery by the defendant of the bond aforesaid, to wit, on the first day of July, in the year 1850, the said Oliver S. Beers was not deputy postmaster of the United States as aforesaid, under and by virtue of an executive appointment of him to such office as alleged, and for the term alleged in said third plea, but was, to wit, then deputy postmaster of the United States at Mobile aforesaid, to wit, in the district aforesaid, under and by virtue of an appointment of him, the said Oliver, as such deputy postmaster theretofore made, to wit, on the 22d day of April, in the year 1850, by the President of the United States, by and with the consent of the Senate of the United States, for a long term of office, to wit, a term of four years from the day and year last aforesaid, unless he should be therefrom sooner removed by the President of the United States; that the bond aforesaid was made on the day of the date thereof, at, to wit, in the district aforesaid, for the faithful discharge by said Oliver of the duties of said office under said last mentioned appointment; and that the breaches of the condition of said bond, whereof plaintiffs have complained in their declaration in this cause, occurred and were committed after the making and delivery as aforesaid of said bond, and before the commencement of this suit, to wit, in the district aforesaid; and this they are ready to verify.

MANNING & WALKER,
For plaintiffs.

And on the said 13th day of January, A. D. 1855, being a day of the aforesaid term of said court, the defendant filed in the clerk's office of said court a rejoinder to the plaintiffs' replication to defendant's third plea, in the words and figures following, to wit:

Rejoinder.

UNITED STATES
vs.
CHARLES LE BARON.

And the said defendant, for rejoinder to the plaintiffs' replication to defendant's third plea, says, that at the time of the execution of said bond, said Oliver S. Beers was not postmaster in the manner and for the term of office set forth in the replication, but was postmaster by Presidential appointment, as set forth in said third plea, and so he says, said bond applied to and covered only the time set forth in the third

plea, and did not apply to and cover any other or new tenure of office; and of this he puts himself upon the country.

DARGAN & HAMILTON, AND SMITH,
For defendant.

And the plaintiffs do the like.

MANNING & WALKER,
For plaintiffs.

And on the aforesaid 13th day of January, A. D. 1855, being a day of the said December term, 1854, of said court, the following proceedings were had:

Judgment.

THE UNITED STATES
vs.
CHARLES LE BARON.

This day came the United States, by their attorneys, and came also the said defendant, by his attorneys, whereupon the said defendant demurs to the said amended declaration, as in his demurrer set forth, and the matters of law being argued and understood by the court, it is considered by the court, the said demurrer be overruled, and that said defendant do plead to the plaintiffs' declaration; whereupon, the said defendant files his three pleas to the said amended declaration, to each of which pleas the said plaintiffs, by their attorneys, demur as in their demurrers on file set forth; and the matters of law therein being argued and understood by the court, it is considered that the demurrer to the first of the three pleas pleaded by defendant be sustained, but the demurrer to the second and third pleas by him pleaded be overruled; and the defendant has leave to amend his said first plea, so as to avoid the defect mentioned in the demurrer thereto, which he declines to do; and the said plaintiffs reply to the said second and third pleas, and issue is thereon taken as to the second plea; and said defendant rejoins to plaintiffs' replication to the third plea by him pleaded and issue thereon. Pending the argument in this cause, the court adjourned until Monday morning the 15th January, 1855, at 10 o'clock a. m. of said day.

Monday morning, January 15th, 1855.

The court met pursuant to adjournment; present, Hon. John Gayle, presiding.

This day the argument in this cause was continued, and before it was concluded, the court adjourned until to-morrow morning at 10 o'clock.

Tuesday morning, January 16th, 1855.

This day the court met pursuant to adjournment; present, the Hon. John Gayle, presiding.

And this day came the said parties, by their attorneys, and also came a jury of good and lawful men, to wit, Peleg Brown and eleven

others, who being elected, tried, sworn, and charged the truth to speak in the issues joined, on their oaths do say, We the jury find the issues for the defendant; it is therefore considered by the court, that the defendant go hence without day.

And afterwards, to wit, on the 18th day of January, A. D. 1855, it being a day of the aforesaid December term, 1854, of the said circuit court, the following proceedings were had, to wit:

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vs.
CHARLES LE BARON.

A bill of exceptions taken on behalf of the plaintiffs has been allowed in this cause, identical, except in respect to the name of the defendant, with that taken on behalf of plaintiffs in this cause, in their suit against George N. Stewart, decided at this term, and is ordered to be filed and made a part of the record in this cause.

Bill of exceptions.

THE UNITED STATES OF AMERICA
vs.
CHARLES LE BARON.

In the circuit court of the United States for the fifth judicial circuit, at Mobile, in the State of Alabama.

On the trial of this cause, plaintiffs' attorneys (having been thereto required by a notice served on them) gave in evidence the original bond sued on, (all of which, except the names, places, date and amounts, was printed,) in the words and figures following, to wit:

"Know all men by these presents, that we, Oliver S. Beers, of Mobile, in the county of Mobile, State of Alabama, and Charles Le Baron and George N. Stewart, are held and firmly bound unto the United States of America in the just and full sum of ($20,000) twenty thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

"In witness whereof, we have hereunto subscribed our names and affixed our seals, this first day of July, in the year of our Lord one thousand eight hundred and fifty (1850).

"The condition of this obligation is such, that whereas the above bounden Oliver S. Beers is deputy postmaster at Mobile aforesaid: Now, if the said Oliver S. Beers shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as deputy postmaster, to the Post Office Department, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that shall come to his hands for the postage of whatever by law is chargeable with postage, in the manner prescribed by the Postmaster General of the United States

for the time being; and shall keep safely, without loaning, using, depositing in bank, or exchanging for other funds than as allowed by law, all the public moneys collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed, and shall also faithfully do and perform, as agent and depositary for the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and shall moreover faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, drafts, receipts, and other vouchers, which he, as agent and depositary as aforesaid, shall receive for the use and benefit of the said Post Office Department; then the above obligation shall be void.

OLIVER S. BEERS, [ ]
CH. LE BARON, [ ]
GEORGE N. STEWART. [SEAL.]

"Witness—FRANCIS DAVID,
ROBERT M. SANDS."

And also the certificate at the bottom of the bond, in the following words and figures, to wit:

"THE STATE OF ALABAMA, *ss:*

"I hereby certify, that the securities above named, and who have signed the foregoing bond, viz., Chas. Le Baron and George N. Stewart, are severally responsible and sufficient to insure the payment of the entire penalty named therein. Witness my hand, this first day of July, A. D. 1850.

JOHN GAYLE,
Judge dist. court U. States for Alabama."

Which being read, the defendant thereupon insisted on having also read to the jury as evidence an endorsement made with a lead-pencil on the bond, without signature and without proof by whom the endorsement was written, in the words and figures following, to wit: "Bond and oath received and commission sent, July 15, 1850;" to the reading of which as evidence the plaintiffs objected, for the reasons that it was merely pencil writing without signature, by whom done not known, and no part of the bond, as they insisted. But the objection was overruled by the court, and the pencil endorsement read by the defendant as evidence to the jury; to all of which, and the ruling of the court on the point, the plaintiffs then and there excepted.

Plaintiffs then introduced the commission dated the 22d day of April, in the year 1850, and signed by the late President of the United States, Zachary Taylor, to said Beers as deputy postmaster of the United States, at Mobile, Alabama, under appointment by and with the advice and consent of the Senate of the United States, for the term of four years, unless the President of the United States for the time being should be pleased sooner to revoke and determine his commission; and

proved that on and after the first day of July, 1850, and until the 6th day of February, in the year 1853, said Beers was in office and acting as deputy postmaster at Mobile, and that he became a defaulter as alleged in the assignment of breaches of the conditions of the bond, and to a large amount during the latter part of the time, when he was holding the office under the appointment by and with the consent of the Senate, and within two years before this suit was brought.

Among the moneys received by said Beers, in respect to which he was charged as a defaulter, was a balance transferred from his account as late postmaster, to his debit as postmaster by and with the consent of the Senate as aforesaid; in respect to which, and also as tending to show that, when said bond was executed, said Beers was in office, under the appointment by and with the consent of the Senate, the plaintiffs, by their counsel, offered in evidence the following writing signed by the defendant, and the other surety to said bond of said Beers, to wit:

"Oliver S. Beers, postmaster at Mobile, having been appointed and subsequently confirmed by the Senate, and having, in compliance with the regulations and rules of the department, transferred a balance of thirty-six hundred and twenty-six dollars and $\frac{84}{100}$ from him due as per account, before the confirmation, to the debit of his new account since the confirmation; we, the sureties of said Oliver S. Beers, do agree to the said transfer, and acknowledge ourselves bound as sureties for said Beers, to account for said balance so transferred as a proper debit, and admit the transfer is made with our consent, as sureties under the new confirmation appointment.

Mobile, April 9, 1851.

(Signed) GEORGE N. STEWART,
C. LE BARON."

Which writing was offered, not as evidence of any new liability thereby contracted, but as an admission merely, dispensing with other testimony of the legality of the transfer referred to; and, as a further admission, tending to show that, when the bond was executed, Beers was in office, under the appointment by and with the consent of the Senate. But this evidence, upon objection made to it by the defendant, was ruled out by the court, to which ruling the plaintiffs then and there excepted.

On the part of the defendant, the said Oliver S. Beers was introduced to testify, that in April, in the year 1849, he became deputy postmaster at Mobile, by a commission (which was not produced) from the late President, Zachary Taylor, under an executive appointment, which was to continue in force until the end of the then next session of the Senate of the United States, and no longer. But to the admission of this testimony of such executive appointment of said Beers, the plaintiffs by their counsel objected, and insisted that the record evidence of such appointment, or a copy thereof, ought to be produced. But the witness having sworn that the commission he received had been de-

stroyed at the burning of his house, the objection of plaintiffs was overruled, and the witness permitted to testify to the contents of said alleged commission; to which ruling and action of the court, the plaintiffs then and there excepted. Said Beers further testified, that, after said appointment by and with the consent of the Senate, he received from the Post Office Department a communication, of which the following is a copy, to wit:

"POST OFFICE DEPARTMENT,
Washington, April 22nd, 1850.

"SIR: The President of the United States, with the advice and consent of the Senate, has appointed you deputy postmaster at Mobile, in the county of Mobile, and State of Alabama, under the 33rd section of the act to change the organization of the Post Office Department, &c., approved 2nd July, 1846, in which capacity you will be authorized to act, upon complying with the following requirements:

"1st. To execute the enclosed bond, and cause it to be executed by two sufficient sureties, in the presence of suitable witnesses, and the sufficiency of the sureties to be certified by a qualified magistrate.

"2nd. To take and subscribe the oath or affirmation of office enclosed before a magistrate, who will certify the same.

"3rd. To deposit your bond and qualification, duly executed and certified as aforesaid, in the mail, addressed to the Second Assistant Postmaster General, Washington, D. C.

"After the receipt at this department of your bond and qualification duly executed and certified, and my approval of the sufficiency of the same, a commission will be sent to you. This appointment is for the term of four years, from the 22nd of April, 1850, unless sooner revoked by the President of the United States for the time being. It is the settled purpose of the President and Postmaster General, to require every postmaster at important offices to attend in person to the duties of his office, to superintend and direct its business, and to know that it is properly conducted. The gross irregularities which have heretofore prevailed at many of the larger offices, in consequence of the postmasters failing to attend personally to their duties, have rendered the above requirement necessary to the efficiency of the public service and the reputation of the department.

"Very respectfully, yr. obd't serv't,
"N. K. HALL,
"*Postmaster General.*

"OLIVER S. BEERS, esq."

Said Beers further testified, that the bond sued on in this cause was signed by the parties on the day of its date, but was not sent until the next or the day after, when it and also his oath of office, under the last appointment by and with the advice and consent of the Senate, were enclosed together and sent to the Postmaster General by mail.

On cross-examination, plaintiffs' counsel inquired of said Beers,

whether the bond was not made for the express purpose, on the part of those who signed it, of securing to him the office of such deputy postmaster, under the last appointment by and with the advice and consent of the Senate; but objections being made by the defendant, the court ruled that witness should not answer the question, and it accordingly was not answered, upon the ground that parol evidence was inadmissible to change or vary the effect of the bond, or to explain the term of office to which it related; and to this ruling of the court, the plaintiffs then and there excepted.

The defendant proved also the death of the late President Taylor on the 9th of July, 1850; that Millard Fillmore, his successor, took the oath of office as President, on the 10th day of the same month; and that the next session of the Senate of the United States, after the first executive appointment of the said Beers in 1849, ended on the 30th day of September, A. D. 1850.

Plaintiffs then again offered, as rebutting testimony, to read to the jury the writing aforesaid, signed by the defendant and the other surety, to show to what appointment or term of office the said bond referred, but on objection by defendant the court ruled it inadmissible, and the plaintiffs excepted. And on the examination in chief of E. H. Metcalf, a special agent of the Government, for the examination in February, 1853, of the defaults of the said Beers, plaintiffs proposed to prove by him the acknowledgment by the defendant and the other surety of Beers, that the bond in question related to the term under the appointment by and with the advice and consent of the Senate; but, on the objection of defendant, this parol testimony was ruled to be inadmissible by the court, and plaintiffs then and there excepted.

Upon this evidence the court charged the jury, that the recital in the condition of the bond sued on, "whereas, Oliver S. Beers is deputy postmaster at Mobile," relates to the office he held when the bond was signed, and could not refer to a term of office not yet commenced.

The court further charged and said, that according to the strict propriety of language, the said recital relates to the precise period of time when the recital was written, (speaking as it does of the present time,) and not to the time when it was executed by its delivery, which the admitted proof shows took place on a subsequent day.

That at the time said bond was signed the said Beers was not in office under his appointment by and with the advice and consent of the Senate, and therefore they, the jury, ought to find for the defendant.

To which charge of the court the plaintiffs, by their attorneys, then and there excepted, and asked the court to charge the jury that the bond related to, and was intended to provide, a security for the faithful discharge by Beers of the duties of the office of deputy postmaster at Mobile, under the appointment by and with the consent of the Senate; which charges the court refused to give; and plaintiffs then and there excepted, and asked the court to charge the jury that it was for them to determine to which term of said office the said bond related, and that

the recital in it that "Beers is deputy postmaster at Mobile" must be considered as made at the time when the bond was delivered and executed; which charge the court also refused to give; and the plaintiffs then and there excepted to such refusal, and prayed the court to sign and seal this their bill of exceptions, which is done accordingly in term time. JOHN GAYLE, *Judge.* [SEAL.]

Writ of error.

UNITED STATES OF AMERICA.

The President of the United States, to the judges of the circuit court of the United States for the southern district of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in said circuit court of the United States for the southern district of Alabama, before you, between the United States, plaintiffs, and Charles Le Baron, defendant, manifest error hath happened, to the great damage of the said plaintiffs, as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the 16th day of May, A. D. 1855.

Attest: GEO. E. HOLT, *C. C. C. so. dist. Ala.*

Citation in error.

UNITED STATES OF AMERICA.

Southern district of Alabama, to Charles Le Baron, or Messrs. Dargan and Hall, and Hamiltons, his attorneys, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden in the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Alabama, wherein the United States are plaintiffs, and the said Charles Le Baron is defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the plaintiffs in that behalf.

Witness the Hon. John Gayle, one of the judges of the circuit court aforesaid, the 16th day of May, A. D. 1855.

JOHN GAYLE, *Judge.*

Marshal's return.

Received and executed, May 16, 1855, by serving Dargan and Hall with a copy of this citation.

C. M. GODBOLD, *U. S. M.*
By W. H. GASQUE, *D. M.*

Clerk's certificate.

I, George E. Holt, clerk of the circuit court of the United States for the southern district of Alabama, do hereby certify, that the foregoing fifty-three pages, inclusively, contain a full, true, and perfect exemplification of the record and proceedings had in a certain cause lately pending and determined therein, wherein the United States were plaintiffs and Charles Le Baron was defendant, as the same remain of record and on file in my office.

In testimony whereof, I have hereto set my hand and affixed the [L. S.] seal of said court, this sixteenth day of May, A. D. 1855.

GEO. E. HOLT,
Clerk circuit court U. S. so. dist. Ala.